



Entered on Docket
October 19, 2009

Hon. Linda B. Riegler
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC, aka
"Rhodes Homes," et al.,¹
Debtors.

Case No.: BK-S-09-14814-LBR
(Jointly Administered)

Chapter 11

Affects:

☐ All Debtors
☒ Affects the following Debtor(s)
Rhodes Design and Development Corporation

Hearing Date: October 2, 2009
Hearing Time: 1:30 p.m.
Courtroom 1

**ORDER APPROVING MOTION OF DEBTOR FOR ORDER APPROVING
STIPULATION TO LIFT THE AUTOMATIC STAY TO EFFECTUATE PREPETITION
SETTLEMENT WITH THE FULKS HOMEOWNERS – [DOCKET NO. 468]**


¹ The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

1 Upon consideration of the *Motion of Debtor for Order Approving Stipulation to Lift the*
2 *Automatic Stay to Effectuate Prepetition Settlement with the Fulks Homeowners* (the "Motion")
3 [Docket No. 468], and good cause appearing,

4 IT IS HEREBY ORDERED that the Motion is granted, and the *Stipulation for*
5 *Modification of Automatic Stay – Fulks Action*, attached hereto as Exhibit A, is approved.

6
7 APPROVED/DISAPPROVED:

8 DATED this 2nd day of October 2009.

9 By: 
10 UNITED STATES TRUSTEE
11 August Landis
12 Office of the United States Trustee
13 300 Las Vegas Blvd. S., Ste. 4300
14 Las Vegas, NV 89101

13 **Prepared and submitted by:**

14 SHINNICK, RYAN & RANSAVAGE P.C.

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EXHIBIT A

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Attorneys for Debtors and
 Debtors in Possession

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In re:

THE RHODES COMPANIES, LLC, aka
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STIPULATION FOR MODIFICATION OF AUTOMATIC STAY – FULKS ACTION

This stipulation (the “Stipulation”) is made and entered into by Elkhorn Partners Limited Partnership, a Nevada Limited Partnership; Elkhorn Investments, Inc., a Nevada Corporation; Rhodes Design and Development Corporation, a Nevada Corporation doing business as Rhodes Homes (“RD&D”) and Eric Fulks, Trust Of Henry Hung-Yeh Tiee, Samuel and Ossie L. Wiggins, Kerry Anderson, Willie and Lenell Patrick, Jr., William and Carol Q. Griffith, Heidi Metellus, Robert C. and Lorraine Anthonisen, Jr., Bryan and Carla Bertges, Audrey Gray, Margaret F. Williams-Jones; James Candela and Diane Rosser, Roberto And Veronica Medina, Neville Emerton and Julia Moore, Gwen E. Amie, Andrea Crapanzano, Lynn I. Thayer, Christine Graeven and Antoinette Buyan, Paul H. Evers, Vickie L. Curtis, Jeffrey W. and Brenda S. Baker, William N. Thurston, Donald Fieselman and Lisa Wochinski, David Garcia, Linda L. Dale, Farrow J. and Hellen A. Smith, Michael Orlando; Kevin G. Fellowes; Stephen M. Robison; Lee A. O’Brien; Brad and Amie Modglin; Donell Jackson; Larry J. and Ardis Leavitt; Attila S. and Roanna Maczala; Peter M. Chura and Michael T. Palladino; Portia Powell and Victoria Leigh; James and Simone Cook; Curtis A. and Susan Bunce; and Thomas C. Groce (collectively, “Homeowners”), through their respective counsel, and is made in reference to the following facts:

A. Homeowners are the owners of forty (40) single-family residences in a development known as the Preserve located in Las Vegas, Nevada. The residences were originally developed and sold by RD&D. On September 26, 2006, Homeowners filed an action in Clark County District Court (Eighth Judicial District Court) to recover for constructional defects in the above-referenced forty (40) homes. The case is identified as *Fulks, et al. v. Rhodes Design and Development, et al.*, Clark County District Court Case No. A528806. Insurance defense counsel responded on behalf of RD&D and a third-party complaint was filed which named a number of the original subcontractor entities that worked at the Preserve as Third-Party Defendants.

B. Sometime in February of 2009, a settlement (the “Settlement”) was reached for the construction defect case, *Fulks, et al. v. Rhodes Design and Development et al.*, and the

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1 Settlement was put on the record in March of 2009. Pursuant to the Settlement, Homeowners
 2 believe they are entitled to recover from insurance policies with respect to certain claims and
 3 causes of action related to the alleged defects for the forty (40) homes in that action. The
 4 Settlement consists of certain payments to be made by the various insurance companies which
 5 insured the subcontractor Third-Party Defendants and RD&D in return for an executed release
 6 from each of the Homeowners.

7 C. On March 31, 2009, RD&D filed a chapter 11 petition under the United States
 8 Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada. As a result
 9 of the pendency of the bankruptcy case, all proceedings against RD&D are automatically stayed.

10 D. RD&D is willing to stipulate to the modification of the automatic stay for the sole
 11 purpose of allowing Homeowners to proceed with the Settlement, which was put on the record
 12 prior to March 31, 2009, and only as against applicable insurance proceeds pursuant to the terms
 13 of the Settlement. The entirety of the Settlement amount will be paid from RD&D's insurance
 14 provider; none of the monies needed to effectuate the Settlement will be provided by funds from
 15 the RD&D bankruptcy estate.

16 NOW, THEREFORE, IT IS HEREBY STIPULATED by the undersigned parties,
 17 through their counsel and respective representatives that:

18 (a) The automatic stay under section 362 of the Bankruptcy Code shall be modified,
 19 subject to Bankruptcy Court approval, to permit Homeowners to proceed against RD&D as a
 20 nominal defendant only so that the Homeowners may proceed with and enforce the Settlement
 21 that was reached in *Fulks, et al. v. Rhodes Design and Development, et al.*, Clark County District
 22 Court Case No. A528806. The Settlement in that action and the monies to be paid on behalf of
 23 RD&D are solely through RD&D's available insurance policies

24 (b) Any and all portions of the Homeowners' claims or causes of action, whether
 25 prepetition or postpetition claims or causes of action, that are not fully satisfied by RD&D's
 26 available insurance policies under the Settlement are hereby forever waived and discharged as
 27 against RD&D and the Debtors, even if the Homeowners are unable to obtain any recovery from
 28 any insurance policies. Upon entry of the Order approving this Stipulation, Homeowners' claims

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1 that are filed in the RD&D bankruptcy case, and listed on Attachment A hereto, shall be deemed
2 withdrawn and the claims agent shall be directed to reflect such proofs of claims as withdrawn.

3 (c) The Bankruptcy Court retains jurisdiction to resolve any dispute arising from the
4 interpretation or enforcement of this Stipulation.

5 (d) By entering into this Stipulation, RD&D is not waiving any defenses at law or in
6 equity.

7
8 DATED this 4th day of September 2009.

DATED this 4th day of September 2009.

9 By: /s/ Eric Ransavage
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Attachment A

Claim #	Claimant	Amount	Date
58	NEVILLE EMERTON AND JULIA MOORE	\$100,000.00	07/16/09
59	PAUL EVERS	\$100,000.00	07/16/09
60	KEVIN FELLOWES	\$100,000.00	07/16/09
61	MIKELL AND LINDA DALE	\$100,000.00	07/16/09
62	VICKIE CURTIS	\$100,000.00	07/16/09
63	JAMES AND SIMONE COOK	\$100,000.00	07/16/09
64	PETER CHURA AND MICHAEL PALLADINO	\$100,000.00	07/16/09
65	JAMES CANDELA AND DIANE ROSSER	\$100,000.00	07/16/09
66	CURTIS BUNCE	\$100,000.00	07/16/09
67	BRYAN AND CARLA BERTGES	\$100,000.00	07/16/09
68	JEFFREY AND BRENDA BAKER	\$100,000.00	07/16/09
69	SEBASTIAN AND ANDREA CRAPANZANO	\$100,000.00	07/16/09
70	ROBERT AND LORRAINE ANTHONISEN	\$100,000.00	07/16/09
71	KERRY ANDERSON	\$100,000.00	07/16/09
72	GWEN E. AMIE	\$100,000.00	07/16/09
73	MARGARET WILLIAMS-JONES	\$100,000.00	07/16/09
74	SAMUEL AND OSSIE WIGGINS	\$100,000.00	07/16/09
75	HENRY AND HUNG-YEH TIEE & JENNY AND DAVID PEACOCK	\$100,000.00	07/16/09
76	WILLIAM THURSTON	\$100,000.00	07/16/09
77	LYNN THAYER	\$100,000.00	07/16/09
78	FARROW AND HELLEN SMITH	\$100,000.00	07/16/09
79	STEPHEN ROBISON	\$100,000.00	07/16/09
80	WILLIE AND LENELL PATRICK	\$100,000.00	07/16/09
81	MICHAEL AND MICHELLE ORLANDO	\$100,000.00	07/16/09
82	LEE O'BRIEN	\$100,000.00	07/16/09
83	BRAD AND AMIE MODGLIN	\$100,000.00	07/16/09
84	HEIDI METELLUS	\$100,000.00	07/16/09
85	VERONICA AND ROBERTO MEDINA	\$100,000.00	07/16/09
86	ATTILLA AND ROANNA MACZALA	\$100,000.00	07/16/09
87	VICTORIA LEIGH AND PORTIA POWELL	\$100,000.00	07/17/09
88	LARRY AND ARDIS LEAVITT	\$100,000.00	07/17/09
89	DONELL JACKSON	\$100,000.00	07/17/09
90	THOMAS GROCE	\$100,000.00	07/17/09
91	F. WILLARD AND CAROL GRIFFITH	\$100,000.00	07/17/09
92	AUDREY GRAY	\$100,000.00	07/17/09
93	CHRISTINE GRAEVEN AND ANTOINETTE BUYAN	\$100,000.00	07/17/09
94	DAVID GARCIA AND VICKEY MURRAY-GARCIA	\$100,000.00	07/17/09
95	DAVID GARCIA AND VICKEY MURRAY-GARCIA	\$100,000.00	07/17/09
96	ERIC AND CAROLE FULKS	\$100,000.00	07/17/09
97	DONALD FIESELMAN AND LISA WOCHINSKI	\$100,000.00	07/17/09

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LR 9021 Certification

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

☐ The court has waived the requirement of approval under LR 9021.

☒ No parties appeared or filed written objections, and there is no trustee appointed in the case.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below.

Submitted by:

DATED this 2nd day of October, 2009.

By: /s/ Zachariah Larson

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